IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.30712 of 2006
and
M.P. No.1 of 2006

M.Radhakrishnan ... Petitioner-in-Person

vs.

1. The Secretary,
The Bar Council of India,
AB/21, Lal Bahadur Shastri Marg,
New Delhi 110 001.

2. The Secretary,
The Bar Council of Tamil Nadu,
High Court Campus,
Chennai 600 104. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of declaration declaring Rule 8(A) of the Enrolment Rules of Bar Council of Tamil Nadu void as stated therein.

Mr.M.Radhakrishnan : Petitioner-in-Person
For Respondent-1 : Mr.B.Balaji
For Respondent-2 : Mr.K.Venkatakrishnan

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

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Thiru.M.Radhakrishnan, who is a practising Advocate, has filed the above Public Interest Litigation, for the issuance of a writ of declaration to declare Rule 8(A) of the Enrolment Rules of Bar Council of Tamil Nadu as void.

2. In the affidavit filed in support of the above petition, it is stated that he joined the Bar on 8th January, 1986, and practised at Ahmedabad from January 1986 to June 1988. Since July, 1988, he has been appearing before the Subordinate Courts, Tribunals and this

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Court. According to him, he approached this Court by way of this Writ Petition (Public Interest Litigation) in the larger interest of administration of justice. The first respondent-Bar Council of India, on 25.09.1993, framed Rule-9 in Chapter III of Part VI of the Bar Council of India Rules, stipulating that a person, who has completed the age of 45 years on the date on which he submits his application for his enrolment as an advocate to the State Bar Council, shall not be enrolled as an Advocate. The Supreme Court of India, in Indian Council of Legal Aid & Advice and others v. Bar Council of India and another ((1995) 1 SCC 732) declared the said Rule as unconstitutional. Similar Rule, viz., Rule 8(A) of the Enrolment Rules of Bar Council of Tamil Nadu, was framed by the 2nd respondent/Bar Council of Tamil Nadu by means of Resolution No.186 of 2006, dated 17.06.2006, and the said Rule became effective from 2nd August, 2006, with the approval of the first respondent. The said Rule is contrary to the law laid down by the Supreme Court in Indian Council of Legal Aid case (cited supra) and violative of Article 14 of the Constitution for the reasons stated by the Supreme Court in paragraph No.13 of the said Case Law.

In the additional affidavit, the petitioner has stated that as per Rule 8(A), those who have got enrolled as Advocates on or after 2nd August 2006 in other State Bar Councils after their attainment of 45 years of age would forever be debarred from applying for transfer of their enrolment to respondent-2 / Bar Council of Tamil Nadu. This provision contained in Rule 8(A) would be violative of Articles 14, 19 (1)(g) and 21 of the Constitution of India.

3. R-2 has filed counter affidavit also on behalf of R-1, stating that the petitioner, being an Advocate, is not an aggrieved person, hence, the present Writ Petition is not maintainable. Similar Rule brought in by the Bar Council of India was quashed by the Supreme Court only on the ground that under Section 28(2)(d) of the Advocates Act, only State Bar Councils can prescribe conditions subject to which a person may be admitted as an Advocate and not the Bar Council of India and consequently, the Rule was struck down. The Supreme Court further held that the Bar Council of India has no Rule making power in this regard being an Apex Body and that the enrolment of Advocates is within the domain of State Bar Councils. Due to compelling circumstances and to preserve the image of the profession and to protect the interest of the members of the Legal profession, in exercise of the Rule-making power available under Section 24(e) and 28 (2)(d) of the Advocates Act, the Bar Council of Tamil Nadu has passed Rule-8(A). Several candidates, even without any basic or formal education, upon attaining a particular age, are allowed to directly appear in one sitting to obtain a Masters Degree and, thereafter, such candidates even proceed to seek admission in law colleges and secure a Law Degree even while in employment and after their retirement from service invariably apply for an enrolment as an Advocate at the age of 58 years to make the noble profession as their pastime. The profession

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has become highly competitive and only very few of them are successful and many of the Advocates are unable to thrive in the profession and finding it difficult for their day-to-day livelihood. Similar to Bar Council, other Bodies like Medical Council of India (MCI) and All India Council for Technical Education (AICTE) have prescribed maximum age limit of 21 years for entering those educational institutions imparting courses in Medical and Engineering, therefore, no candidate beyond the age of 21 years can aspire to enter any such professional courses and consequently only those who have the ambition of becoming an Engineer or a Doctor can become a professional in those fields. Many persons consider the legal profession as their alternative source of income after retirement from service and / or a side avocation and not a career of ambition and that is the reason why the standard of the legal profession is deteriorating in the present days and there is a threat to the integrity of the profession. In the past, there has been number of complaints of fake law degrees being issued in neighbouring States. In no other profession, entry of a candidate is permitted at the age above 45 years, while so, by entry of such aged persons after their retirement, with the knowledge acquired during the course of their previous employment, they gain undue advantage as against those who are wedded to this legal profession. There are so many practical disadvantages faced by the Advocates due to entry of retired persons at the age of 60s and even above. Keeping in mind the interest and welfare of the members of the legal profession, the second respondent reintroduced the rule, fixing an upper age limit for the valid reasons and objects. The right to practice as an Advocate is not a fundamental right but a statutory right provided one satisfies the prescribed conditions that are laid down by the statutory body that regulates and governs the legal profession. If no cut off age is fixed for entry into the profession, there would be a constant increase in the ratio of enrolment of candidates after retirement and a situation will be reached to threaten the integrity of the legal profession. Hence, merely because the Advocates Act prescribes completion of 21 years as minimum age limit for entering into the profession in Section 24(1)(b) of the Advocates Act, no inference can be drawn that the Parliament in its wisdom had not thought fit to stipulate an upper age limit while prescribing a minimum age limit. Prescribing an upper age limit for being enrolled as an Advocate is not a disqualification as found in Section 24-A of the Advocates Act.

The second respondent has also filed additional counter affidavit reiterating their earlier stand. It is further stated that most of the Law Colleges in some parts of the country admit students into Law Course and award Law Degree without insisting for regular attendance and classes. In cases where the Law Degree is of any other State other than Tamil Nadu, the 2nd respondent verifies the genuineness and the fact whether the candidate underwent the course by actual attendance and only thereafter, enrols such candidates. On account of this shortcoming even persons with unclean antecedents acquire legal qualification and enter into the profession leisurely

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according to their convenience and such persons are even dominating the Bar Associations, which ultimately affects the reputation of the profession. Due to the entry of undesirable elements into this profession, inducement for frequent strike and criminalisation of the profession is not far away. It is stated that there is no discrimination as both categories are not similarly placed, as the first candidate already enrolled but later took up job or entered any other gainful employment but when reverting to practice after crossing the age of 45 certainly is on better footing than the second candidate who had either acquired law qualification during the course of his employment or having acquired the law qualification without enrolling as Advocate taking up employment is on an entirely different footing and these two category of persons are not similarly placed and therefore, there will be no discrimination at all. The restriction imposed by the impugned Rule is a reasonable one as enunciated in Article 14 of the Constitution of India.

4. In the light of the above pleadings, we heard Mr.M.Radhakrishnan, petitioner appearing in person; Mr.B.Balaji and Mr.K.Venkatakrishan, learned counsels for R-1 and R-2 respectively.

5. The Advocates Act, 1961, provides for an autonomous Bar Council in each State and an All India Bar Council consisting mainly of the representatives of the State Bar Councils. Under the Act, a State Bar Council is to enrol qualified persons as Advocates and prepare a roll of advocates practising in the State and thereafter, a common roll of Advocates for the whole of India is to be prepared by the Bar Council of India. The Advocates whose names are entered in the common roll would be entitled as of right to practise in all the courts in India including the Supreme Court. Under the Act, a State Bar Council has been empowered to enrol qualified persons as Advocates on its Roll. The State Bar Councils are required to frame Rules for the purpose but they do not have effect unless they are approved by the Bar Council of India.

6. Chapter-III of the Act deals with Admission and Enrolment of Advocates. As per Section-17, State Bar Councils are to maintain a roll of Advocates. Section-18 speaks about transfer of name from one State roll to another. Amongst other Provisions, Section-24 is relevant,

> " 24. Persons who may be admitted as advocates on a State roll.-- (1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:--

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(a) he is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law --

(i) .....
(ii) .....
(iii).....
(iiia) ...
(iv) .....
(d) .....

(e) he fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

....."

Section-28 gives power to a State Bar Council to make rules to carry out the purposes of Chapter-III. It provides as follows:-

" 28. Power to make rules.-- (1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,--

(a) .....
(b) .....
(c) .....
(d) the conditions subject to which a person may be admitted as an advocate on any such roll;
(e) .....
(3) ..... "

Section-24 referred to above prescribes the qualification for enrolment as an advocate in a State roll. As per the same, he must be a citizen of India having completed 21 years of age and obtained a degree in law. Further he has to fulfil the conditions specified by the State Bar Council in the rules and also pay the stamp duty and enrolment fee.

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7. Now, let us consider the legality or otherwise of the impugned provision, viz., Rule-8A of the Enrolment Rules of Bar Council of Tamil Nadu.

8. At the first instance, we intend to look into the impugned rule and the explanation thereto.

The Bar Council of Tamil Nadu by Resolution No.186 of 2006 dated 17.06.2006 added Rule 8(A) after Rule 8 of the Enrolment Rules of Bar Council of Tamil Nadu. We extract hereunder the impugned rule, clarification and explanation thereto from the Notice of the Bar Council of Tamil Nadu dated 23.08.2006,

> " A person who is otherwise qualified to be admitted as an advocate, but is of more than 45 years of age on the date of submission of application for enrolment in the Bar Council shall not be admitted as an Advocate.
>
> Further provided that this rule shall not be applicable to any person, whose enrolment application is pending before coming into force of this rule.
>
> It is further clarified that provision of this rule shall not be applicable to any advocates already enrolled by any High Court under Indian Bar Council Act, 1926 but intimated under Section 17(1)(a) of the Act, was not received from the concerned advocate.
>
> The provisions of this rule shall also apply in case of persons seeking transfer of enrolment to this Bar Council by means of transfer from other State Bar Councils.
>
> Explanation:-
>
> After the date of coming into force of this Rule, any person enrolling as an Advocate in any other State Bar Council, where there is no age restriction, shall not be entitled to apply for transfer to this State Bar Council.
>
> This rule will come into force from the date of approval of the Bar Council of India. "

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9. Mr.Radhakrishnan, petitioner appearing in person, heavily relied on the decision of the Apex Court reported in 1995 (1) SCC 732 (cited supra). According to him, the said decision covers the issue involved. In the said case, the Supreme Court considered Resolution No.64 of 1993 of the Bar Council of India, dated 22.08.1993, adding Rule-9 in Chapter III of Part VI of the Bar Council of India Rules, which resolution was gazetted on 25.09.1993. The said newly added Rule reads as under:-

> " A person who has completed the age of 45 years on the date on which he submits his application for his enrolment as an advocate to the State Bar Council shall not be enrolled as an advocate. "

The legality and validity of the said Rule was questioned in a batch of Writ Petitions as inconsistent with Article 14, 19(1) (g) and 21 of the Constitution and Section 24 of the Advocates Act, 1961. The Bar Council of India, in the form of a counter affidavit, highlighted that the rationale is that the profession of law being a pious and honourable profession, its main object being service of mankind by serving the system of administration of justice, it is the pious duty of the Bar Council to protect its public image by restricting the inflow of a large number of retired personnel who seek to enter the legal profession solely for additional gains. Such persons are not inspired by lofty ideals of the profession but their only motive is money-making for which they are prepared to stoop to any levels which has a very negative influence on young minds who join the profession after graduation. The Hon'ble Supreme Court after considering the rule-making power of the Bar Council of India under Section 49 of the Act, in paragraph No.8, concluded thus:-

> " 8. ..... We have, therefore, no hesitation in coming to the conclusion that clause (ah) of Section 49(1) of the Act does not empower the Bar Council of India to frame a rule barring persons who have completed 45 years of age from enrolment as an advocate. The impugned rule is, therefore ultra vires the said provision. "

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The Supreme Court also analysed from another angle, viz., whether the said Rule can be saved under any other provisions of the Act. After adverting to Sections-24(1)(e), 49(1) and Chapter III in general, it was concluded thus,

> " 12. ..... It is difficult to accept the interpretation that all those above the age group of 45 years constitute a class within the scope of

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clause (ag) of Section 49(1) of the Act to permit the Bar Council of India to debar their entry into the profession for all times. In the guise of making a rule the Bar Council of India is virtually introducing an additional clause in Section 24 of the Act prescribing an upper age ceiling of completed age of 45 years beyond which no person shall be eligible for enrolment as an advocate or is inserting an additional clause in Section 24-A of the Act prescribing a disqualification. Viewed from either point of view we are clearly of the opinion that the rule-making power under clause (ag) of Section 49(1) of the Act does not confer any such power on the Bar Council of India. We are unable to subscribe to the view that all those who have completed the age of 45 years and are otherwise eligible to be enrolled as advocates constitute a class or category which can be disqualified as a single block from entering the profession. Besides, as stated above clause (ag) relates to identification and specification of a class or category of persons 'entitled' to be enrolled and not 'disentitled' to be enrolled as advocates. We, therefore, are of the opinion that the impugned rule is beyond the rules making power of the Bar Council of India and is, therefore, ultra vires the Act."

The above mentioned findings and ultimate conclusion of the Hon'ble Supreme Court make it clear that the Bar Council of India has no power to impose such unreasonable restriction and the same is beyond its rule making power and therefore ultra vires the Act. Had the Supreme Court stopped with the said conclusion, there would not be any difficulty in accepting the stand of the Bar Council of Tamil Nadu and Bar Council of India that there is no decision/conclusion by the Supreme Court on other aspects, viz., whether the Rule is reasonable or arbitrary and unreasonable. As a matter of fact, after finding that Rule-9 is beyond the rule-making power of the Bar Council of India and ultra vires the Act, the Hon'ble Supreme Court analysed the other aspect viz., whether the said Rule is reasonable or arbitrary and unreasonable. The said discussion is available in para No.13 of the Judgment, which is extracted below:-

" 13. The next question is, is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various Government, quasi-Government and other institutions since they on being enrolled as advocates use their past contacts to canvass for cases and thereby

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bring the profession into disrepute and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-government or quasi-government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrolment. Thirdly, those who were enrolled as advocates while they were young and had later taken up some job in any Government or quasi-Government or similar institutions and had kept the sanad in abeyance are not debarred from reviving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practising. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practice even after crossing the age of 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution. "

It is clear that though the Hon'ble Supreme Court did not choose to go into the larger question, viz., whether Rule-9 is violative of Article 19(1)(g) of the Constitution, undoubtedly, they found that,

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(a) there is no reliable statistical or other material placed on record in support of the inference that ex-government or quasi-government servants or the like indulge in undesirable activity of the type mentioned after entering the profession;

(b) the Rule is discriminatory since it does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrolment; and

(c) it is unreasonable and arbitrary as the choice of the age 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons.

These principles are applicable to the case on hand.

10. Reliance was also placed on a decision rendered by a Division Bench of this Court (consisting of D.RAJU and A.R.LAKSHMANAN, JJ.) in J.Sampath Kumar v. Bar Council of India and another (1995 Writ L.R. 187). The constitutional validity of Rule-9 in Chapter III of Part VI of the Bar Council of India Rules was challenged by a group of petitioners by way of writ petitions. The said Rule was published in the gazette of India on 25.09.1993, disentitling a person who has completed the age of 45 years on the date on which he submits his application for his enrolment as Advocate to the State Bar Council. After referring to the claim of both parties, relevant statutory provisions and rules, the Division Bench concluded that the impugned rule-9 introduced in Chapter III of Part VI is in excess of the rule-making power besides being inconsistent with the provisions of the Act and also renders itself liable to be struck down. The Division Bench, apart from finding that the Rule is beyond the rule-making power of the Bar Council of India, had also gone into the reasonableness in view of Article 14 of the Constitution of India, which discussion runs as follows:-

" 16. That apart, this Court further views that the impugned rule cannot be said to be a reasonable restriction in the interest of general public. As noticed supra, apart from the subject being a matter pertaining to a matter of policy for Legislature to declare, the apprehensions of the rule-making authority and the avowed object, which professedly propelled them in making such a rule, does not also appear to be a genuine or a reasonable excuse to justify the unreasonable action. The rule, though has the consequence of permanently disentitling a person, who has attained the age of 45 from getting enrolled, it is not as though such category of persons are completely eliminated. In its operation, the rule, in our

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view, brings about invidious discrimination also on irrelevant considerations. There could be no substantial distinction or difference between a person below 45 years getting enrolled, leaving profession instantly by suspending the right to practise and reverting back at any age he likes and a person who wants to got enrolled after he attains 45 years at any point of time after getting qualified or getting eligible for being so enrolled and willing to be entered in the profession. The rule also does not provide for any exceptions to mitigate the grievance of genuine person, who could not, for relevant or genuine reasons either pursue or complete the studies before he attained 45 years or in the case of a person who had secured his degree earlier and did not get himself enrolled immediately but wants to join the legal profession after he attains 45 years. The apprehension based upon persons leaving their employment or rushing after retirement to join the legal profession as being alone responsible for the deteriorating standards or the quality and reputation of the Bar, is merely a matter of surmise, with no credible or legitimate basis for such assumptions. Section 24 (A) of the Act as amended in 1993, while introducing Clause (c) to sub-section (1) takes sufficient care of persons guilty of misconduct getting enrolled as members of the profession and the legislative policy and intention to debar such person is not for and paid unlimited period. In our view, the imposition of a restriction by introducing an upper age limit so as to operate as a disqualification for any one to get enrolled as a member of the Bar does not really achieve the avowed and proclaimed object of the rule, nor could we consider that the imposition of such a restriction is an effective or a permanent panacea for the woes, and ills in the profession. A permanent blockage of the nature devised seem to run against the policy of the Act itself. In substance, the rule cannot be said to conform to either logic or reason or any dictates of absolute necessity in the process of purification of the profession. In our view, the rule stands of arbitrariness, besides bringing about invidious discrimination on irrelevant and extraneous considerations. Consequently the rule cannot be said to be either reasonable or required or necessitated in the interest of general public. On this ground alone, the rule is liable to be struck down as being violative of Art.14 of the Constitution.

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17. ..... However laudable the object sought to be achieved may be, we are unable to subscribe to the view that the enrolment of persons who have completed the age of 45 years has the effect of undermining the morality or decorum or the dignity and reputation of the noble profession. On the other hand, with the advancement of age, a person grows rich in experience and gains, skill, sobriety, maturity of understanding and perfection to do things effectively and handles matter diligently carefully judiciously and with conviction. This being the normal attribute of growing old, there is nothing concrete before us for any assumptions to the contrary in favour of the Rule making authority in this case. In AIR 1986 SC 1035 = 99 L.W.21 (SC) S.N. (Indiravadan, H. Shaw v. State of Gujarat and another) while considering a challenge to the age restriction in regard to the appointment of Assistant Judge by promotion amongst members holding posts of Civil Judges (Junior Division) and those in the cadre of Civil Judges (Senior Division), the Apex Court held as here under :-

"The posts of Assistant Judge as well as of District Judge are included in Senior Branch of Gujarat Judicial Service. It is incomprehensible how these two cadres of Assistant Judges and District Judges can be treated as two different classes altogether, thereby justifying the introduction of age restriction in regard to selection and appointment by promotion to the post of Assistant Judge while doing away with any such sort of age limit or restriction in respect of appointment to the post of a District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges. Articles 14 and 16 of the Constitution ensure that there should not be any discrimination in the matter of appointment in service, nor there will be any arbitrariness or unreasonableness in the rules of recruitment providing for the rules of appointment to the service either by promotion or by direct recruitment. There is no nexus to the object sought to be achieved by introducing the age restriction as regards the promotion by appointment to the post of Assistant Judge from amongst the members of the Gujarat Judicial Service (Junior Branch) as provided in Rules 6(4)(i) and 6(4)(iii)(a) of the said Rules. But in respect of appointment to the highest post of a District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges no such restriction of age has been

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provided in Rules 6(2)(i)(a) and (b) of the said Rules. There is obviously no rationale nor any reasonableness for introduction of this age bar in regard to appointment by promotion to the post of an Assistant Judge. The rule, is therefore, arbitrary, and it violates the salutary principles of equality and want of arbitrariness in the matter of public employment as guaranteed by Articles 14 and 16 of the Constitution."

When that seems to be the position even in respect of recruitment or promotion to service, there could be no justification whatsoever to do so in respect of a profession, independent, as it is claimed, to have a guillotine based upon an upper age limit.

18. For all the reasons stated above, we declare that the impugned Rule 9 introduced by the Bar Council of India by its Resolution No.64 of 1993 is ultra vires its rule-making powers, inconsistent with the provisions of the Act and also arbitrary and unreasonable. Consequently, the same shall be struck down as unconstitutional and violative of Article of the Constitution of India and unenforceable in law. .... "

Here again, the Division Bench not only considered impugned Rule-9 with reference to the rule-making power of the Bar Council of India but also concluded that the rule itself is arbitrary and unreasonable with reference to the constitutional provisions. As said earlier, identical rule has been framed by the Bar Council of Tamil Nadu, viz., Rule-8A, thus, the conclusion arrived at by the Division Bench is also applicable to the case on hand. Though both the counsel appearing on behalf of the respondents cited several other decisions, on verification, we find those decisions not applicable to the case on hand, hence, we restrict with the above referred decisions (Indian Council of Legal Aid (SC); and Sampath Kumar's case (DB - Madras HC)) which are directly on the point.

11. Now, let us proceed further taking the above referred decisions as touchstone to decide the case on hand.

First of all, it is apparent that the impugned Rule, viz., Rule-8A of the Enrolment Rules of Bar Council of Tamil Nadu, is nothing but a re-introduction of Rule-9 framed by the Bar Council of India, which was struck down by the Hon'ble Supreme Court after an elaborate discussion on various aspects in a detailed manner. We have broadly highlighted the decision of the Supreme Court and that of the Division Bench of this Court and also the contentions projected on either side. Now, let us enumerate the main factors in a nutshell which, according to the Bar Council of Tamil Nadu, made/compelled them to frame the impugned Rule and thereafter consider the acceptability/genuineness of

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those factors and consequently, the validity/sustainability of the Rule. The main reasons attributed to bring in Rule-8A are,

(i) To upkeep the professional standards and to protect the interests of the members of the legal profession.

(iii) Legal Profession has become competitive and only a few are successful and others are unable to thrive.

(iii) Several candidates, without formal or basic education, succeed in getting law degree while in government service or other employment, making the profession a pastime.

(iv) To sift those who obtained fake law degrees from unrecognised universities of other States and to prevent deterioration in quality and standards.

(v) Like other bodies (MCI & AICTE), which prescribe for maximum age limit for candidates who aspire to join the course, Bar Council is also entitled to fix an upper age limit.

(vi) To protect exclusively the interest of fresh entrants from the invasion of those who had no initial inclination to join the profession.

(vii) The belated entrants claim to be treated on par with the Advocates who have accepted the profession as full time career in the matter of benefits arising from Welfare Scheme for the Advocates.

(viii) Right to practice is merely a statutory right and not a fundamental right.

12. We have already extracted Section-24 of the Advocates Act. Section 24(e) stipulates that the person applying for enrolment should fulfil such other conditions as may be specified in the rules made by the State Bar Council under Chapter-III dealing with Admission and Enrolment of Advocates. Section-28 in the said Chapter relates to 'power to make rules', which is also extracted above. According to the respondents, there was proper exercise of jurisdiction, in that, the Bar Council of Tamil Nadu, by virtue of the power vested in it, framed the Rule keeping in mind the various factors as enumerated above.

13. Now, we shall consider the substance in the claim made by the Bar council of Tamil Nadu by going into the acceptability of various factors adverted to by it. First of all, no concrete material with statistics has been submitted before this Court that due to the inflow of belated entrants, the standard and quality of the profession dwindled to a great extent. Deterioration in standard would be mainly attributed to two things, viz., lack of knowledge and lack of manners. If the Bar Council of Tamil Nadu mean to say that the belated entrants; according to the Bar Council, one major group comes for enrolment after 58 or 60 years; have no good knowledge and also lack in manners, then, such claim is at best a delusion born of surmises and conjectures. Interestingly, the following statement in the counter affidavit stares at the very version of the respondents,

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" 13. I state that in no other profession, entry of a candidate is permitted at the age above 45 years of age, while so, by entry of such aged persons after their retirement, with the knowledge acquired during the course of their previous employment, gain undue advantage as against those who are wedded to this legal profession. ….

17. …. Secondly, to show that the belated entrants were the cause for deterioration of standards in the profession no material could be made available ……"
(emphasis supplied)

Further, the claim that such belated entrants are indulging in undesirable activities and often calling for strikes and other unwanted activities is apparently baseless. In this regard, as could be seen from the counter affidavit of the respondents, entrants to legal profession can be classified into four categories, viz.,

Category No.1: Fresh law graduates, who enrol and continue to practise, taking legal profession as full time career.

Category No.2: Fresh law graduates, who, after getting enrolled, suspend the enrolment, go for some other profession or employment, again leisurely turn back to the legal profession when they desire so.

Category No.3: Service candidates, who during the course of their employment or before that, pursue the law course and comes to the profession only after superannuation or voluntary retirement.

Category No.4: Persons, who managed to get fake law degrees and enter into the field.

On a careful consideration of the matter, we have no second opinion that category No.4 is definitely to be eliminated. But, at the same time, it cannot be said that there is no machinery to check and penalise such persons involved in issuing and obtaining fake law degrees. We witness so many instances where the fake law degree holders and those who issued such degree certificates being brought to justice and also suitably dealt with by imposing punishment. Can the age factor has relevancy in maintaining the standards of the profession? The definite answer is an emphatic 'no'. We are not able to understand the attitude of the Bar Council in clinging towards category No.2 and showing indifference towards category No.3, when both of them almost stand on the same footing. If one looks carefully at these two categories, category No.3 stand on better footing than category No.2. The view that category No.3 could practise influence because of their past services is meaningless since category No.2 also

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re-enter after their engagement/service in other fields or even in Government employment. After all category No.2, who turn back to the profession after completion or being unsatisfied or bored with the job they pursued by suspending enrolment, may be coming in by 'leisure entry'. Looking at the other aspect relating to Category No.3, it is apparent from the counter affidavit that the Bar Council is aggrieved by their approach in respect of Welfare Schemes to Advocates. The Bar Council feels that this category is trying to grab the benefits that are exclusively accruable to category No.1. It is useful to extract the relevant portion from the counter affidavit,

> "21. I further state that under the welfare scheme, payment of lump sum to these class of persons were in slabs depending on the length of standing in the Bar according the schedule of the Welfare scheme Act. That however many of those persons who have received their retirement benefits and getting monthly pension for their past services rendered, upon their enrolment as Advocates, even filed Writ Petitions alleging discrimination and claim compensation on par with the Advocates who had accepted their profession as their full time carrier (sic.) and a batch of Writ Petitions are pending. I don't dispute that it is their fundamental right to raise challenges and it is only to show their attitude, we have cited our experience as an illustration."

If the Bar Council is aggrieved by such actions, they can evolve schemes in respect of monetary benefits accruable to the practising members proportionate to the number of years they have been practising and other relevant factors. Even in Government service, to get pensionary and other monetary benefits, one has to put in a minimum qualifying service and other persons cannot reap such benefits. In spite of the same, if such group of Advocates claim any benefit as matter of right, the Bar Council is always at liberty to establish their genuine claim and get proper remedy before the court of law. It is needless to point out that talented persons would find treasures open for them in this profession, hence, knowledge and dedication being the prime factors for success in this field, no brilliant or bright young entrant would be discouraged or forced to quit the profession by the entry of category Nos.2 and 3. In fact, they would get exposure to healthy competition in the field at the beginning itself and ability to withstand the rigour of challenges before them. Further, entry of Category No.3 would have come down to a considerable extent due to the suspension of evening colleges imparting law course to service candidates. We intend to point out that legal profession, being distinct in its nature compared to other professions, what applies to MCI and AICTE cannot be strictly made applicable to Bar Council. Each discipline has its own distinct features and all cannot be judged with the same yardstick. The procedure of admission,

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selection and entry relating to Medicine and Engineering are different from law course. In the Act itself, the Parliament fixed no upper age limit for pursuing law course after taking note of various relevant features covering the area, hence, the State Bar Council cannot widen/expand its rule-making power so extensively to discriminate or classify between two similarly placed persons (Category Nos.2 and 3) based on utter arbitrariness; in such a course, it is the duty of the court to stretch its hands to save the affected party and to remind the limit of the body in respect of its rule-making power, particularly when Article 14 is flagrantly violated. That is why the Apex Court in Indian Council of Legal Aid's case rather specified that no State Bar Council has brought in such rule in violation of Article-14. It is relevant to highlight the said observation here,

> " 11. .... It is, therefore, within the exclusive domain of the State Bar Councils to admit persons as advocates on their rolls or to remove their names from the rolls. There is no provision in Chapter III dealing with admission and enrolment of advocates which restricts the entry of those who have completed 45 years as advocates. Nor has the State Bar Council made any such rule under its rule-making power. "

We emphasise that While striking down Rule-9, the supreme Court, after observing so, not stopping therewith, itself posed a question, " 13. The next question is, is the rule reasonable or arbitrary and unreasonable? " and answered the same, which is extracted in the earlier part of the Judgment. Hence, the contention of the respondents that the Supreme Court struck down Rule-9 framed by the Bar Council of India only on the basis of jurisdictional aspect and not on other various aspects has no substance. We also add here that when a person is fully qualified to be enrolled to practise as an Advocate and such person, if curtailed from enrolment on the basis of age factor, in view of the reasons given above, such curtailment cannot be so lightly defended by stating that the right to practice as an Advocate is merely a statutory right in a given set of facts. We unveil the object of the rule that it is only to curtail a group of persons from entering into the profession and to satisfy other group of persons who also stand on the same footing. Merely because happening of certain stray instances here and there, it cannot be said that the whole field is dominated by persons with undesirable character.

14. We cumulatively considered above the acceptability of the various factors projected for imposing the upper age limit. We make it clear that we are not underestimating the rule-making power of the Bar Council of Tamil Nadu, at the same time, we cannot uphold the validity of a provision, even though it arises out of the rule-making power of the authority with proper jurisdiction, when it is apparently stained with arbitrariness and inequality and infringes Article 14 of the constitution. Thus, we have no other option except to declare the

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impugned Rule-8(A) as void and unconstitutional.

15. The other phase to be analysed is relating to the Explanation clause to Rule-8(A). It states that after the coming into force of Rule 8(A), any person enrolling as an Advocate in any other State Bar Council, where there is no age restriction, shall not be entitled to apply for transfer to Tamil Nadu Bar Council. Again, revolving around the same reasons as enumerated above, the Bar Council of Tamil Nadu goes on to say in the Additional Counter affidavit,

> " 5. I respectfully submit that with reference to the Judgment of the Honourable Supreme Court of India while deciding the introduction of age restriction for enrolment in the year 1993, the Honourable Supreme Court in the first instance held that there was no reliable statistical or other materials on record in support of the inference that Ex-Government or Quasi Government servants or the like indulged in undesirable activity of the type mentioned after entering the profession. With utmost respect to our Apex Court we submit that such materials or statistics cannot be collected ....."
>
> (emphasis supplied)

16. The State Bar Council is constant in repeating the same version again and again without coming forward before this Court with sufficient statistical data substantiating their claim, however, they admit their inability in bringing concrete evidence, hence, illusion and imagination cannot be allowed to be a base to frame a rule or clause thereof. In respect of the apprehension that law degrees from other States are not upto the expectation or standard, it is for the respective State Bar Councils to identify the universities and, after proper verification of the degree certificate and other documents, they can very well deny enrolment if the documents found to be fake or issued by any unrecognised university and there is no compulsion on the part of the Bar Councils to enrol them on their Roll. It cannot be the case of the second respondent that Bar Councils of other States have no check on the issue of fake degrees and certificates issued by unrecognised universities. Inasmuch as we have already held that Rule-8(A) is unconstitutional, any clause or explanation arising therefrom shall meet the same fate.

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17. Consequently, entire Rule-8(A) including the Explanation added after Rule 8 of the Enrolment Rules of Bar Council of Tamil Nadu is declared void and unconstitutional. Writ Petition is allowed as prayed for. No costs. Connected Miscellaneous Petition is closed.
JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary, The Bar Council of India,
AB/21, Lal Bahadur Shastri Marg, New Delhi 110 001.

2. The Secretary, The Bar Council of Tamil Nadu,
High Court Campus, Chennai 600 104.

+ one cc to Mr. K. Venkatakrishnan, Advocate sr no. 55778
+ one cc to Mr. M. Radhakrishnan, Advocate sr no. 55174
+ one cc to the Government Pleader sr no. 55544

VC(CO)
NM(29.11.2006)

WP No.30712/06.

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